

UNITED STATES DISTRICT COURT
DISTRICT OF NEVADA

* * *

UNITED STATES OF AMERICA,

Case Nos. 3:16-cr-00086-MMD-WGC-1

Respondent/Plaintiff,

ORDER

v.

RONALD WILLIAMS III,

Petitioner/Defendant.

I. SUMMARY

Williams plead guilty to one count of Felon in Possession of a Firearm, in violation of Title 18, United States Code, Sections 922(g)(1) and 924(a)(2) (ECF Nos. 25, 27) and on November 7, 2017, the Court sentenced him to 70 months imprisonment (ECF No. 29). Before the Court is Williams' motion to vacate, set aside, or correct his conviction and sentence under 28 U.S.C. § 2255(a). (ECF No. 32 (the "Motion").)¹ Williams filed his Motion in response to the Supreme Court's ruling in *Rehaif v. U.S.*, 139 S. Ct. 2191 (2019), arguing that the Supreme Court's reinterpretation of 18 U.S.C. §§ 922(g) and 924(a)(2) in *Rehaif* renders his indictment defective for failure to include a requisite mens rea element. But because Williams' claims are procedurally barred, because he waived the right to raise constitutional claims like this one when he plead guilty unconditionally, and as further explained below, the Court will deny the Motion.

II. BACKGROUND

On December 14, 2016, a grand jury indicted Petitioner Ronald Williams on two counts of Felon in Possession of a Firearm, in violation of 18 U.S.C. §§ 922(g)(1) and

¹The government opposes the Motion. (ECF No. 34.) Williams filed a reply. (ECF No. 38.)

1 924(a)(2). (ECF No. 1.) As to Count Two, Felon in Possession of a Firearm, the indictment
 2 alleges the following:

3 On or about November 23, 2016, in the State and District of Nevada, Ronald
 4 Williams III, defendant herein, having been convicted of crimes punishable
 5 by imprisonment for a term exceeding one year . . . did knowingly possess
 6 a Norinco rifle . . . a Norinco rifle . . . a Smith & Wesson rifle . . . a Smith &
 7 Wesson rifle . . . a Heckler & Koch rifle . . . said possession being in and
 8 affecting commerce; all in violation of Title 18, United States Code, Sections
 9 922(g)(1) and 924(a)(2).

10 (*Id.*) Williams plead guilty to Count Two of the indictment and Count One was dismissed.
 11 (ECF Nos. 25, 27.) On November 7, 2017, the Court sentenced Williams to 70 months
 12 imprisonment and three years supervised release. (ECF No. 29.) Judgment was entered
 13 on November 13, 2017. (ECF No. 30.) Williams did not appeal his sentence. He is
 14 scheduled to be released on November 12, 2021. (ECF No. 32 at 5.) On June 16, 2020,
 15 he filed the Motion. (ECF No. 32.)

16 **III. LEGAL STANDARD**

17 As noted, Williams requests his sentence be vacated, set aside, or corrected under
 18 28 U.S.C. § 2255(a) following the Supreme Court's decision in *Rehaif*, 139 S. Ct. 2191.
 19 (*Id.*) Under § 2255, a federal prisoner may "move the court which imposed the sentence
 20 to vacate, set aside or correct the sentence" if the sentence was imposed in violation of
 21 the Constitution or laws of the United States. 28 U.S.C. § 2255(a). On June 21, 2019, the
 22 Supreme Court decided *Rehaif*, overruling longstanding Ninth Circuit precedent regarding
 23 the required mens rea under 922(g) and 924(a)(2).² See 139 S. Ct. at 2200. Prior to the
 24 decision, the government was only required to prove the defendant knowingly possessed
 25 a firearm. See *id.* But under *Rehaif*, the government "must prove both that the defendant
 26 knew he possessed a firearm and that he knew he belonged to the relevant category of
 27 persons barred from possessing a firearm." *Id.* Thus, the decision added a new mens rea
 28 element to 922(g) and 924(a)(2).

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30 ²See *U.S. v. Enslin*, 327 F.3d 788,798 (9th Cir. 2003) (holding the government did
 31 not need to prove defendant knew of their prohibited status under 922(g).)

1 **IV. DISCUSSION**

2 Williams argues that his indictment failed to state a federal crime by omitting a
3 necessary element of § 922(g)(1) required under *Rehaif*, depriving the court of subject
4 matter jurisdiction and rendering his conviction unconstitutional. (ECF No. 32.) As to the
5 constitutionality of the conviction, Williams claims that the indictment lacked a cognizable
6 claim, violating his Fifth Amendment right requiring that the grand jury find probable cause
7 to support all necessary elements of the crime, and his Sixth Amendment right
8 guaranteeing notice of the nature and cause of the accusations against him. (*Id.*) Further,
9 Williams argues that the government was required to demonstrate not only that he knew
10 of his prohibited status, but also that he knew his status prohibited him from possessing
11 a firearm. (*Id.*) Ultimately, Williams maintains these errors are structural, requiring the
12 Court vacate his conviction and release him. (*Id.*)

13 The government responds that Williams' claims are waived by his unconditional guilty
14 plea, and procedurally barred because they were not raised on direct appeal. (ECF No.
15 34.)

16 As further explained below, the Court addresses each issue Williams raises and
17 finds as follows. First, Williams' petition is timely. Second, *Rehaif* applies retroactively.
18 Third, the government is not required to demonstrate Williams knew he was barred from
19 possessing a firearm. Fourth, the Court had subject matter jurisdiction at the time it
20 imposed his sentence. Fifth, Williams' claims are procedurally barred because while he
21 can demonstrate cause, he has failed to demonstrate prejudice and there is no structural
22 error. Finally, Williams waived his right to bring a challenge by pleading guilty. In short,
23 the Motion is ultimately denied because Williams waived his right by pleading guilty and
24 the Motion is procedurally barred.

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1 **A. The Petition is Timely**

2 Under 28 U.S.C. § 2255, a “1-year period of limitation” applies and runs from the
 3 latest of four time triggers.³ See 28 U.S.C. § 2255. Williams claims that his Motion is timely
 4 because it was filed within one year of *Rehaif* being decided. (ECF No. 32 at 10.) Under
 5 this standard, the Motion is timely. *Rehaif* was decided June 21, 2019, and thus Williams
 6 had until June 20, 2020 to file for relief. The Motion was filed June 16, 2020. (ECF No.
 7 32.) Thus, it was filed within one year of the Court’s decision in *Rehaif*. Moreover, the
 8 government does not contest timeliness.

9 **B. Retroactivity**

10 Williams next argues that the new rule established in *Rehaif* applies retroactively
 11 to his case. (*Id.* at 10-11.) As the government does not dispute retroactivity,⁴ the Court
 12 assumes without deciding that *Rehaif* applies retroactively to Williams’ § 2255 claims.
 13 See *U.S. v. Abundis*, Case No. 2:18-cr-00158-MMD-VCF-1 (D. Nev. Nov. 30, 2020).

14 **C. Required Proof**

15 Williams further argues that the plain language of *Rehaif* requires the government
 16 not only demonstrate he knew of his prohibited status—as previously convicted of a crime
 17 punishable by more than one year—but knew that this status barred him from possessing
 18 a firearm. (ECF No. 32 at 7-9.) The Court finds that the government was only required to
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20 ³The four time triggers are: “(1) The date on which the judgment of conviction
 21 becomes final; (2) the date on which the impediment to making a motion created by
 22 governmental action in violation of the Constitution or laws of the United States is
 23 removed, if the movant was prevented from making a motion by such governmental
 24 action; (3) the date on which the right asserted was initially recognized by the Supreme
 25 Court, if that right has been newly recognized by the Supreme Court and made
 26 retroactively applicable to cases on collateral review; or (4) the date on which the facts
 27 supporting the claim or claims presented could have been discovered through the
 28 exercise of due diligence.” 28 U.S.C. § 2255.

29 ⁴The government only cursorily addresses retroactivity and at no point refutes
 30 Williams’ argument that *Rehaif* applies retroactively. (ECF No. 34 at 6 (“Just as Williams
 31 argues with respect to the retroactivity analysis, see ECF No. 32, at 11, the government
 32 believes that *Bailey v. United States*, 516 U.S. 137 (1995) provides an ‘excellent parallel’
 33 for the procedural default analysis.”).)

1 prove that Williams knew of his prohibited status, not that Williams knew his status barred
2 him from possessing a firearm. See *Abundis*, Case No. 2:18-cr-00158-MMD-VCF-1.

3 **D. Subject Matter Jurisdiction**

4 Next, Williams argues that because the indictment did not describe each element
5 of the offense he was charged with, it failed to make out a federal offense, depriving the
6 Court of jurisdiction under 18 U.S.C. § 3231—a defect constituting structural error. (ECF
7 No. 32 at 15-16.) To the extent the indictment was defective for failing to allege the mens
8 rea element under *Rehaif*, it did not deprive this Court of subject matter jurisdiction. See
9 *Abundis*, Case No. 2:18-cr-00158-MMD-VCF-1.

10 **E. Procedural Default**

11 The government also argues that Williams' claims are procedurally defaulted.
12 (ECF No. 34 at 6.) While a defendant is permitted to attack the legality of his sentence or
13 conviction, a defendant who fails to raise the claim on direct appeal is procedurally
14 defaulted unless the defendant can demonstrate: (1) cause and prejudice; or (2) actual
15 innocence. See *Bousley* 523 U.S. at 622 (citations omitted); *U.S. v. Frady*, 456 U.S. 152,
16 167-168 (1982).

17 Williams does not contest that he did not raise the claim in the Motion during his
18 direct appeal, but Williams responds he can overcome his procedural default because the
19 errors in his indictment are structural, requiring only a showing of cause to set it aside.
20 (ECF No. 32 at 13, 16-21.) Alternatively, Williams argues that he can overcome
21 procedural default because he has sufficiently demonstrated cause and prejudice. (ECF
22 No. 38 at 7-10.) The Court finds that Williams demonstrates cause but not prejudice or
23 structural error.

24 **1. Cause**

25 A defendant has cause to overcome procedural default when the “constitutional
26 claim is so novel that its legal basis is not reasonably available to counsel.” *Reed v. Ross*,
27 468 U.S. 1, 16 (1984). A claim is not reasonably available if it “overturn[s] a longstanding

1 and widespread practice to which this Court has not spoken, but which a near-unanimous
 2 body of lower court authority has expressly approved." Id. at 17 (quotation omitted).

3 The Court finds Williams has cause because *Rehaif* overturned longstanding
 4 practice approved by a near unanimous body of lower courts, making his claim based on
 5 *Rehaif* "novel." See *Abundis*, Case No. 2:18-cr-00158-MMD-VCF-1.

6 **2. Prejudice**

7 The actual prejudice prong of the procedural default analysis requires a defendant
 8 show "not merely that the errors created a possibility of prejudice, but that they worked to
 9 his actual and substantial disadvantage, infecting his entire proceedings with error of
 10 constitutional dimensions." *Murray v. Carrier*, 477 US at 478, 488 (1986). For defective
 11 indictments, the question is "whether an error or omission in an indictment worked to the
 12 prejudice of the accused." *U.S. v. James*, 980 F.2d 1314, 1316 (9th Cir. 1992). More
 13 specifically, the question is whether the defendant had "been given adequate knowledge
 14 of the missing element[] in order to satisfy the due process requirement." *Id.* at 1318.

15 Williams argues that without adequate knowledge of the missing element, due
 16 process was not satisfied because he was not given notice and not able to put on a
 17 thorough defense. (ECF No 38 at 17-21.) The government relies on the Ninth Circuit's
 18 decision in *U.S. v. Benamor*, 937 F.3d 1182, 1186 (9th Cir. 2019), to argue that, given his
 19 criminal history, no reasonable possibility exists that Williams did not know he had been
 20 convicted of a crime for which he could be sentenced to more than a year imprisonment.
 21 (ECF No. 34 at 17-19.)

22 In *Benamor*, the defendant filed a petition for rehearing following *Rehaif*, arguing
 23 that the evidence was insufficient because the government failed to prove he knew he
 24 was a felon. See 937 F.3d at 1188. The Ninth Circuit pointed to the defendant's stipulation
 25 that he had been convicted of a crime punishable by more than one year to relieve the
 26 government's burden. See *id.* But the Ninth Circuit also acknowledged that "the stipulation
 27 does not end the discussion as to Defendant's knowledge of his status." *Id.* Rather, the
 28 court pointed to defendant's seven prior felony convictions, several of which were

1 sentences for more than one year imprisonment imposed, as well as the nine years he
 2 actually spent in prison and conclusively indicated there was no error in not instructing
 3 the jury to find knowledge of prohibited status. *Id.* And although, as Williams points out,
 4 the plain error standard does not apply here,⁵ *Benamor* is instructive. There, the Ninth
 5 Circuit relied on the stipulation but focused primarily on the nine years in prison. Many
 6 courts determining prejudice have similarly relied predominantly on a defendant's criminal
 7 history to find it is implausible that the defendant did not know they had been convicted
 8 of a crime punishable by imprisonment for a term exceeding one year.⁶

9 Here, the Court similarly finds it implausible that Williams was unaware of his
 10 status, as formerly convicted of a crime punishable by imprisonment for a term exceeding

11 ⁵"This is the wrong standard. Tellingly, the government cites no case applying the
 12 plain error standard to habeas petitions. This is because 'use of the 'plain error' standard
 13 to review [a] § 2255 motion [is] contrary to long-established law.'" (ECF No. 38 at 19 (citing
Frady, 456 U.S. at 167).)

14 ⁶See e.g., *U.S. v. Reynolds*, Case No. 2:16-cr-00296-JAD-PAL-3, 2020 WL
 15 5235316, at *4 (D. Nev., Sept. 2, 2020) (finding that 13 total years in prison on five felony
 16 convictions "renders it implausible that Reynolds did not know at the time of this offense
 17 that he had been convicted of a crime punishable by imprisonment for a term exceeding
 18 one year and forecloses his actual-prejudice arguments."); *U.S. v. Lowe*, Case No. 2:14-
 19 cr-00004-JAD-VCF, 2020 WL 2200852, at *2 (D. Nev. May 6, 2020) (finding that evidence
 20 of serving five years in prison "proves beyond a reasonable doubt that Lowe well knew at
 21 the time of the offense that he had been convicted of 'a crime punishable by imprisonment
 22 for a term exceeding one year.'"); *Whitley v. U.S.*, Case No. 04 Cr. 1381 (NRB), 2020 WL
 23 1940897, at *2 (S.D.N.Y. Apr. 22, 2020) (finding that "any argument that Whitley was
 24 prejudiced therefrom is belied by the sheer implausibility that, after having been convicted
 25 of multiple prior felony convictions for which sentences exceeding a year had been
 26 imposed, and having in fact served more than a year in prison in connection therewith,
 27 Whitley nevertheless lacked the requisite awareness of his restricted status."); *MacArthur
 28 v. U.S.*, Case No. 1:12-cr-00084-JAW, 2020 WL 1670369, at *10 (D. Me. Apr. 3, 2020)
 ("The record, including the presentence investigation report, shows that Petitioner had
 numerous prior felony convictions over many years before the § 922(g) conviction at
 issue...[thus] the Government would have been able to prove beyond a reasonable doubt
 that Petitioner knew of his prohibited status at the time he possessed the firearm."); *Floyd
 v. U.S.*, Case No. 19 C 6578, 2020 WL 374695, at *3 (N.D. Ill. Jan. 23, 2020) ("His plea
 agreement stated that he had previously been convicted of a crime (heroin
 manufacturing/delivery) for which he was sentenced to *four* years in prison, and he
 admitted at his plea hearing that he 'had been convicted of at least one crime punishable
 by imprisonment for a term exceeding one year. It is inconceivable that Floyd would have
 declined to plead guilty...'") (citations omitted).

1 one year, given his criminal history. By the time Williams allegedly possessed the firearm,
 2 he had previously served more than a year in prison for a prior conviction for felon in
 3 possession of a firearm. (ECF No. 34 at 18; see Presentence Investigation Report at ¶
 4 37 (Williams was sentenced to 12 to 48 months imprisonment on August 2013 conviction
 5 for Ex-Felon in Possession of a Firearm).)

6 Thus, as other courts have concluded,⁷ Williams is unable to demonstrate
 7 prejudice given his criminal record. The Court finds that Williams did not suffer prejudice.
 8 Accordingly, Williams cannot overcome procedural default.

9 **3. Structural Error**

10 Alternatively, Williams argues that the constitutional errors are structural, requiring
 11 only a showing of cause and not prejudice. The Court finds no structural error fatally
 12 infected Williams' indictment. See *U.S. v. Feehan-Jones*, Case No. 3:15-cr-00011-MMD-
 13 VPC-1 (D. Nev. Dec. 2, 2020).

14 **F. Claims Waived by Unconditional Guilty Plea**

15 Finally, the government argues that by pleading guilty unconditionally, Williams
 16 waived his right to make any non-jurisdictional challenges to the indictment under the rule
 17 announced in *Tollett v. Henderson*, 411 U.S. 258, 267 (1973). (ECF No. 34 at 14.) The
 18 Court finds Williams' claims are barred by his guilty plea. See *Abundis*, Case No. 2:18-
 19 cr-00158-MMD-VCF-1. Therefore, the claims are both procedurally barred, as discussed
 20 above, and also barred by his guilty plea.

21 **V. CERTIFICATE OF APPEALABILITY**

22 Before Williams can appeal the Court's decision to deny his Motion, he must obtain
 23 a certificate of appealability. 28 U.S.C. § 2253(c)(1)(B); Fed. R. App. P. 22; 9th Cir. R. 22-
 24 1; *U.S. v. Washington*, 653 F.3d 1057, 1059 (9th Cir. 2011). To receive such a certificate,
 25 a petitioner must make "a substantial showing of the denial of a constitutional right" as to

26
 27 ⁷As discussed above in footnote 6, other courts have predominantly relied on the
 amount of time in custody to find no prejudice exists. See, e.g., *Lowe*, 2020 WL 2200852,
 28 at *2 n.15 (collecting cases).

1 each issue the petitioner seeks to appeal.” *Washington*, 653 F.3d at 1059 (quoting 28
2 U.S.C. § 2253(c)(2), (3)). “The petitioner must demonstrate that reasonable jurists would
3 find the district court’s assessment of the constitutional claims debatable or wrong.” *Slack*
4 *v. McDaniel*, 529 U.S. 473, 484 (2000). The Court determines that reasonable jurists
5 would not find its reasoning debatable or wrong. Thus, the Court will deny a certificate of
6 appealability.

7 **V. CONCLUSION**

8 The Court notes that the parties made several arguments and cited to several
9 cases not discussed above. The Court has reviewed these arguments and cases and
10 determines that they do not warrant discussion as they do not affect the outcome of the
11 motion before the Court.

12 It is therefore ordered that Williams’ motion to vacate, set aside, or correct his
13 conviction and sentence (ECF No. 32) is denied.

14 It is further ordered that a certificate of appealability is denied.

15 The Clerk is directed to enter judgment in accordance with this order and close this
16 case.

17 DATED THIS 2nd Day of December 2020.



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19 MIRANDA M. DU
20 CHIEF UNITED STATES DISTRICT JUDGE
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